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DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

RIN 1506-AB17

Amendment to the Bank Secrecy Act Regulations – Requirement That Clerks of Court Report Certain Currency Transactions

AGENCY: Financial Crimes Enforcement Network (“FinCEN”), Treasury.

ACTION: Final rule.

SUMMARY: FinCEN is amending the rules relating to the reporting of certain currency transactions consistent with a recent statutory amendment authorizing FinCEN to require clerks of court to file such reports with the U.S. Department of the Treasury. Such information already is required to be reported by clerks of court pursuant to regulations issued by the Internal Revenue Service (“IRS”), but FinCEN heretofore has been limited in its ability to access and share further that information because of minor differences between the relevant statutory authorities applicable to FinCEN and the IRS.

DATES: *Effective Date:* [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT:

The FinCEN regulatory helpline at (800) 949–2732 and select Option 6.

SUPPLEMENTARY INFORMATION:

I. Statutory Provisions

FinCEN exercises regulatory functions primarily under the Currency and Financial Transactions Reporting Act of 1970, as amended by the USA PATRIOT Act of

2001 and other legislation, which legislative framework is commonly referred to as the “Bank Secrecy Act” (“BSA”),¹ which authorizes the Secretary of the Treasury (“Secretary”) to require financial institutions to keep records and file reports that “have a high degree of usefulness in criminal, tax, or regulatory proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.”² The Secretary has delegated to the Director of FinCEN the authority to implement, administer, and enforce compliance with the BSA and associated regulations.³ FinCEN is authorized to impose anti-money laundering (“AML”) program requirements on financial institutions.⁴

Under 31 U.S.C. 5331, any person who is engaged in a trade or business and who, in the course of such trade or business, receives more than \$10,000 in coins or currency in one transaction (or two or more related transactions) is required to file a report with respect to such transaction (or related transactions) with FinCEN. Reporting under section 5331 does not apply to amounts received in a transaction reported under 31 U.S.C. 5313 and its implementing regulations.⁵

For purposes of section 5331, currency includes foreign currency, and to the extent provided in regulations, any monetary instrument, whether or not in bearer form, with a face amount of not more than \$10,000. Such monetary instruments shall not include any check drawn on the account of the writer in a financial institution referred to

¹ The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, 18 U.S.C. 1956, 18 U.S.C. 1957, 18 U.S.C. 1960, and 31 U.S.C. 5311–5314 and 5316–5332 and notes thereto, with implementing regulations at 31 CFR Chapter X. *See* 31 CFR 1010.100(e).

² 31 U.S.C. 5311.

³ Treasury Order 180-01 (Sept. 26, 2002).

⁴ 31 U.S.C. 5318(h)(2).

⁵ *See, e.g.*, 31 CFR 1010.310.

in subparagraph (A), (B), (C), (D), (E), (F), (G), (J), (K), (R), or (S) of 31 U.S.C. 5312 (a)(2).

Reports required under section 5331 must be in such form as FinCEN may prescribe. The reports must contain: (1) the name, address, and such other identification information as FinCEN may require, of the person from whom the coins or currency was received; (2) the amount of coins or currency received; (3) the date and nature of the transaction; and (4) such other information, including the identification of the person filing the report, as FinCEN may prescribe.

On December 23, 2011, the President signed the Consolidated Appropriations Act, 2012 (the “Act”) into law. Section 120 of Title I, Division C of the Act amends 31 U.S.C. 5331 by further requiring that any persons “required to file a report under section 6050I(g) of the Internal Revenue Code of 1986” file reports with FinCEN in the time and manner prescribed by regulation. Section 6050I(g) of title 26 requires every clerk of a Federal or State criminal court who receives more than \$10,000 in cash as bail for any individual to make a return of that information. The amendment to 31 U.S.C. 5331 therefore authorizes FinCEN to require clerks of court to report certain currency transactions.

II. Final Rule

The final rule contained in this document is intended to enable FinCEN to receive reports on certain currency transactions filed by clerks of court. Since 2002, FinCEN has required persons engaged in a trade or business to report certain currency transactions.⁶ That requirement is deemed satisfied by the filing of a single Form 8300 for transactions

⁶ 66 FR 67680 (December 31, 2001), codified at 31 CFR 1010.330.

subject to both the IRS's rule⁷ and FinCEN's rule. The underlying statutory authority for FinCEN's 2001 rule did not authorize reporting by clerks of court. Consequently, any Form 8300 filed since 2002 by a clerk of court was reported pursuant to the IRS's rule and FinCEN's ability to access and share further such information has been limited because of the applicable restrictions on disclosure in the U.S. tax code. During calendar year 2010, approximately 7,600 Form 8300s were filed by clerks of court, representing roughly 2 percent of the total number of Form 8300s filed for that year. FinCEN has determined that the information contained in such reports can be highly useful in criminal, tax, and regulatory investigations or proceedings, and in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism.

As amended, section 5331(a)(2) now requires reporting to FinCEN of the same transaction that must be reported to the IRS under 26 U.S.C. 6050I(g) and 26 CFR 1.6050I-2. Because section 5331(a)(2) and section 6050I(g) of Title 26 are identical in terms of reporting to Treasury,⁸ the final rule contained in this document provides that clerks of court required to report a transaction under section 5331(a)(2) must make that report by filing a joint FinCEN/IRS Form 8300 with Treasury. Under this dual reporting regime, only one form is required to be filed for a transaction subject to both section 5331(a)(2) and section 6050I(g) of title 26. Use of the Form 8300 currently used by clerks of court to satisfy 26 U.S.C. 6050I(g) and 26 CFR 1.6050I-2 will satisfy the

⁷ 26 CFR 1.6050I-1.

⁸ Section 5331 does not require the person making a report (either as a trade or business or a clerk of court) to furnish a statement concerning the report to: (i) the person whose name is required to be set forth on the report; or (ii) Federal prosecutors for the jurisdiction in which such person resides and the jurisdiction in which the specified criminal offense occurred. *Cf.* 26 U.S.C. 6050I(e) and (g). The final rule therefore does not place any of these notification requirements upon clerks of court.

requirement under the final rule. Thus, the final rule imposes no new reporting or recordkeeping burden on clerks of court.

Because the IRS authority and the FinCEN authority governing the reporting to Treasury of certain currency transactions by clerks of court are identical, FinCEN believes it is appropriate for the final rule to adopt the same definitions and rules relating to the time and manner of reporting, including verifying the identity of each payor of bail listed in the report. Thus, for example, the final rule defines a clerk of court to mean, with respect to a Federal or a State court, the clerks' office or the office, department, division, branch, or unit of the court that is authorized to receive bail.

The final rule makes two other non-substantive conforming changes to FinCEN's rule requiring a trade or business to report certain currency transactions. The first change amends the trade or business rule to acknowledge that the same information is now required to be reported to Treasury under both 26 U.S.C. 6050I and 31 U.S.C. 5331. The second change to the trade or business rule reflects that the definition of currency used therein is slightly different from the definition used in the clerks of court rule, and therefore is not applicable for purposes of 31 U.S.C. 5331 in all cases.

III. Notice and Comment under the Administrative Procedure Act

The Administrative Procedure Act (5 U.S.C. 553) ("APA") allows an agency to dispense with notice and comment when it would be impractical, unnecessary, or contrary to the public interest. Because the final rule affects only clerks of court and imposes no new or additional burden on them, notice and public comment are unnecessary.

IV. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to initial and final regulatory analysis (5 U.S.C. 604) are not applicable to the final rule contained in this document because FinCEN was not required to publish a notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

V. Paperwork Reduction Act

This regulation is being issued without prior notice and public comment pursuant to the APA. For this reason, the collection of information contained in this regulation has been reviewed under the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(j)) and approved by the Office of Management and Budget (OMB) under control number 1506-0018. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

VI. Executive Orders 13563 and 12866

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It has been determined that the final rule is neither an economically significant regulatory action nor a significant regulatory action for purposes of Executive Orders 13563 and 12866.

VII. Unfunded Mandates Reform Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), Public Law 104–4 (March 22, 1995), requires that an agency prepare a

budgetary impact statement before promulgating a rule that may result in expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202.

List of Subjects in 31 CFR Part 1010

Administrative practice and procedure, Banks, banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Securities, Terrorism.

Authority and Issuance

For the reasons set forth above, Chapter X of title 31 of the Code of Federal Regulations is amended as follows:

PART 1010—GENERAL PROVISIONS

1. The authority citation for part 1010 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951-1959, 31 U.S.C. 5311-5314 and 5316-5332, title III, sec. 314, Pub. L. 107-56, 115 Stat. 307.

2. Amend § 1010.330 by revising paragraph (a)(1)(ii) and the introductory text to paragraph (c)(1) to read as follows:

§ 1010.330 Reports relating to currency in excess of \$10,000 received in a trade or business.

(a) * * *

(1) * * *

(ii) *Certain financial transactions.* Section 6050I of title 26 of the United States Code requires persons to report information about financial transactions to the IRS, and 31 U.S.C. 5331 requires persons to report the same information to the Financial Crimes Enforcement Network. This information shall be reported on the same form as prescribed by the Secretary.

* * * * *

(c) * * *

(1) Currency. The term *currency* means—

* * * * *

3. Add new § 1010.331 to read as follows:

§ 1010.331 Reports relating to currency in excess of \$10,000 received as bail by court clerks.

(a) *Reporting requirement.*—(1) *In general.* Any clerk of a Federal or State court who receives more than \$10,000 in currency as bail for any individual charged with a specified criminal offense must make a report of information with respect to that receipt of currency. For purposes of this section, a clerk is the clerk's office or the office, department, division, branch, or unit of the court that is authorized to receive bail. If someone other than a clerk receives bail on behalf of a clerk, the clerk is treated as receiving the bail for purposes of this paragraph (a).

(2) *Certain financial transactions.* Section 6050I of title 26 of the United States Code requires clerks to report information about financial transactions to the IRS, and 31 U.S.C. 5331 require clerks to report the same information to the Financial Crimes

Enforcement Network. This information shall be reported on the same form as prescribed by the Secretary.

(b) *Meaning of terms.* The following definitions apply for purposes of this section --

(1) The term *currency* means --

(i) The coin and currency of the United States, or of any other country, that circulate in and are customarily used and accepted as money in the country in which issued; and

(ii) A cashier's check (by whatever name called, including treasurer's check and bank check), bank draft, traveler's check, or money order having a face amount of not more than \$ 10,000.

(2) The term *specified criminal offense* means --

(i) A Federal criminal offense involving a controlled substance (as defined in section 802 of title 21 of the United States Code), provided the offense is described in Part D of Subchapter I or Subchapter II of title 21 of the United States Code;

(ii) Racketeering (as defined in section 1951, 1952, or 1955 of title 18 of the United States Code);

(iii) Money laundering (as defined in section 1956 or 1957 of title 18 of the United States Code); and

(iv) Any State criminal offense substantially similar to an offense described in this paragraph (b)(2) of this section.

(c) *Time, form, and manner of reporting.*—(1) *In general.* The reports required by paragraph (a) of this section must be made by filing a Form 8300, as specified in 26 CFR 1.6050I-2(c)(2). The report must be filed at the time and in the manner specified in 26 CFR 1.6050I-2(c)(1) and (3), respectively.

(2) *Verification of identity.* A clerk required to make a report under this section must, in accordance with 26 CFR 1.6050I-2(c)(3)(ii), verify the identity of each payor of bail listed in the report.

Dated: June 1, 2012

James H. Freis, Jr.
Director,
Financial Crimes Enforcement Network

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